



STATE OF INDIANA
ALCOHOL AND TOBACCO COMMISSION

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The Brew Pub LTD)
d/b/a The Pub)
16533 Cleveland Rd., Suite C)
Granger, IN 46530)

Permit #RR71-18326

PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW

I.

BACKGROUND OF THE CASE

The Brew Pub LTD, d/b/a The Pub, 16533 Cleveland Rd., Suite C Granger, Indiana 46530 ("Permittee") is the holder of an Alcohol and Tobacco Commission permit type 209, permit #RR71-18326. The Permittee is charged with the following violations occurring on July 16, 2009:

Furnishing alcohol beverage to minor, Indiana Code 7.1-5-7-8.

Allowing a minor to loiter. Indiana Code 7.1-5-7-10 (b).

The hearing on the merits was conducted before Hearing Judge E. Edward Dunsmore on February 11, 2010. The Alcohol and Tobacco Commission ("Commission") was represented by the Prosecutor, Jennifer D. Drewry. The Permittee appeared by Thomas R. Schmidt, Corporate Officer, Secretary. Witnesses were sworn, evidence was heard, the parties presented final arguments and the matter was taken under advisement. Hearing Judge E. Edward Dunsmore, having reviewed the tape recorded transcript of the hearing, the evidence submitted to the Commission at the hearing and the contents of the entire file, now tenders his Proposed Findings of Fact and Conclusions of Law for recommendation to members of the Commission.

II.

EVIDENCE SUBMITTED BEFORE THE COMMISSION

The following exhibits were introduced by the Prosecutor against the Permittee in this cause:

1. The contents of the entire Commission file ("ATC file").
2. Indiana State Excise Police citation report regarding incident occurring on July 16, 2009, at The Pub, Granger, IN.
3. Copy of Indiana Excise Police Report of Permit Visit and Evaluation issued to The Brew Pub LTD, d/b/a The Pub, for Furnishing Alcoholic Beverages to a Minor in violation of IC 7.1-5-7-8 and Allowing a Minor to Loiter in violation of IC 7.1-5-7-10(b) regarding an incident occurring on July 16, 2009, at the Pub in Granger, IN.
4. Three copies of photographs of a youth known as Nathan IU#436, DOB 5/25/1989.

The following exhibits were introduced by the Permittee on behalf of the Permittee in this cause:

None

The following individuals testified on behalf of the Prosecutor against the Permittee in this cause:

1. Indiana Excise Police Officer Heather Heeg.
2. A youth known as Nathan IU #436, DOB 5/26/89.
3. Indiana State Excise Police Officer Javier Arroyo.

The following individuals testified on behalf of the Permittee in this cause:

1. Thomas R. Schmidt, Secretary of The Brew Pub LTD, d/b/a The Pub.
2. Tami Schmidt Manager of The Brew Pub LTD d/b/a The Pub.

III.
FINDINGS OF FACT

1. The Permittee, The Brew Pub LTD, d/b/a the Pub, 16533 Cleveland Rd, Suite C, Granger, Indiana 46530 is the holder of a type 209 permit, permit #RR71-18326 (ATC file).
2. Thomas R. Schmidt is the Secretary of The Brew Pub LTD, d/b/d The Pub. (permit violation hearing, ATC file).
3. The Permittee, by and through its employee and Manager Tami Schmidt, admitted that she, Tami Schmidt, sold alcoholic beverages to a minor identified as Nathan IU # 436 without asking for or checking his identification to determine his age, and that said sale occurred on July 16, 2009.(permit violation hearing).
4. On Thursday July 16, 2009, at approximately 5:00 p.m., Indiana Excise Police Officers Heather Heeg and Javier Arroyo were conducting random unannounced inspections at locations where alcoholic beverages are sold or distributed, pursuant to IC 7.1-5-7-16 and IC 7.1-5-7-17. These inspections are commonly known as survey of alcohol compliance ("SAC") checks. (permit violation hearing; ATC file).
5. Officer Heeg and a minor known as Nathan IU # 436, DOB 5/26/1989 ("Nathan") conducted a SAC check at the Pub in Granger, Indiana. (permit violation hearing; ATC file).
6. On July 16, 2009, at approximately 5:00 p.m., Nathan and Officer Heeg (in plain clothes) entered The Pub in unidentified capacities.(ATC file; permit violation hearing)
7. While inside The Pub, Nathan ordered a Bud Light beer. Employee Tami Schmidt retrieved and handed a 12 ounce bottle of Bud Light to Nathan. Nathan handed Tami Schmidt \$2.00 dollars and the transaction was completed. Nathan was not asked for identification as proof of his age. (ATC file; permit violation hearing).
8. Officer Heeg and Nathan left The Pub shortly thereafter, leaving the Bud Light purchased at the bar counter. (permit violation hearing; ATC file).
9. At approximately 10:00 p.m., Indiana Excise Police Officer Javier Arroyo returned to The Pub. He identified himself verbally and by badge to a female bartender. Officer Arroyo asked to speak to the manager and the female bartender stated that she was the night manager. The night manager identified herself as Erica Kramer. (permit violation hearing; ATC file).
10. Officer Arroyo explained to manager Kramer that the permit premises had earlier been the subject of a SAC check and that a female bartender named Tami had served a minor without checking the minor's identification. Officer Arroyo informed manager Kramer that the violations would be against the permit premises. (permit violation hearing; ATC file).
11. Officer Arroyo completed a Report of Permit Visit and Evaluation charging the permit premises with Furnishing Alcoholic Beverages to a Minor (count one) and Allowing a Minor to Loiter (count two). Manager Kramer signed the violation notice. (permit violation hearing).
12. The permittee, The Brew Pub LTD, d/b/a The Pub, had failed a previous SAC check without being charged and this was a follow-up visit. (permit violation hearing; ATC file).

13. The Permittee, according to the testimony of Thomas R. Schmidt and Tami Schmidt, believes conjunctively and alternatively that:
 - a. The manner in which the SAC check was done amounted to illegal State conduct constituting entrapment.
 - b. The permit premises has been in business for fifteen years and has a good reputation for not serving minors.
 - c. Nathan looked older than 21 years of age and either had a beard or “five o’clock shadow”.

IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over these proceedings and over this permittee. Indiana Code 7.1-3-19-1; Indiana Code 7.1-3-23-2
2. The definition of a permittee includes an agent, a servant, or other person acting on behalf of a permittee, whenever a permittee is prohibited from doing an act under this title. Indiana Code 7.1-1-3-30(b)
3. Tami Schmidt (employee) and Thomas R. Schmidt (secretary) were agents or other persons acting on behalf of a permittee, namely The Brew Pub, LTD., d/b/a The Pub. Indiana Code 7.1-1-3-30(b)
4. A minor means a person less than 21 years of age. Indiana Code 7.1-1-3-25
5. It is unlawful for a permittee to recklessly permit a minor to be in the prohibited place beyond a reasonable time in which an ordinary, prudent person can check identification, or confirm the age of a patron. Indiana Code 7.1-5-7-10(b)
6. A prohibited place includes a tavern, a bar, or other public place where alcoholic beverages are sold, bartered, exchanged, and given away, provided or furnished. Indiana Code 7.1-5-7-10(a)
7. It is unlawful for a permittee to allow a minor on his permit premises, except as provided in Indiana Code 7.1-5-7-11 and Indiana Code 7.1-5-7-13 --- 905 IAC 1-15.2-1(b); Indiana Code 7.1-2-3-7.
8. It is unlawful for a person to recklessly, knowingly or intentionally sell, barter, exchange, provide or furnish an alcoholic beverage to a minor. Indiana Code 7.1-5-7-8.
9. Defenses to furnishing alcohol are provided in Indiana Code 7.1-5-7-5.1.
10. The burden of proof rests upon the permittee (seller) to establish the defense provided in Indiana Code 7.1-5-7-5.1; *Mulread v. State*, 7 N.E. 884 (Ind. 1886); *Fehn v. The State*, 29 N.E. 1137 (Ind. App.1892)
11. The permittee, The Brew Pub LTD, d/b/a/ The Pub, by virtue of its relationship with Tami Schmidt (employee) and Thomas R. Schmidt (secretary) is guilty of the violations of recklessly furnishing alcoholic beverage(s) to a minor, and allowing a minor to loiter. Indiana Code 7.1-5-7-8 and Indiana Code 7.1-5-7-10 (b).
12. The weight of the evidence and burden of proof do not sustain any of the defenses to unlawfully furnishing alcohol to a minor and allowing a minor to loiter as provided for in IC 7.1-5-7-5.1.
13. The weight of the evidence, burden of proof and status of the law do not sustain either conjunctively or alternatively the defenses of: a) mistaken identity, b) double jeopardy, c) illegal state conduct, or d) good reputation as a defense. (IC 7.1-5-7-17: U.S. Constitution. Amend. 5; Ind. Const. Article 1, §14)

14. The permittee, The Brew Pub LTD, d/b/a The Pub, is guilty of recklessly furnishing alcoholic beverage(s) to a minor pursuant to Indiana Code 7.1-5-7-8 and allowing a minor to loiter pursuant to Indiana Code 7.1-5-7-10 (b).

WHEREFORE, the Hearing Judge determines from the presentation and review of the evidence that the Prosecution HAS PROVEN that the Permittee, The Brew Pub LTD, d/b/a The Pub, has violated the following statutes:

Recklessly furnishing alcoholic beverage(s) to minor(s), in violation of Indiana Code 7.1-5-7-8; and
Allowing a minor to loiter in violation of Indiana Code 7.1-5-7-10 (b).

WHEREFORE, the Hearing Judge recommends the following disposition to the Commission:

Fine in the amount of five hundred (\$500.00)

Dated: _____

E. Edward Dunsmore Hearing Judge
Alcohol and Tobacco Commission